



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Homer D. Eek
Auditor, Fayette County
La Grange, Texas

Dear Sir:

Opinion No. O-6684
Re: Authority of sheriff to
permit payment of fine by
installments and related
questions.

Your request for an opinion of this department
reads in part as follows:

"In the County Court of Fayette criminal case was tried and the jury assessed a fine of \$250.00. Judgment was entered by the court for the amount plus cost, the total fine and cost amounting to \$456.63. A bill of cost was furnished the sheriff for the amount.

"The Sheriff and attorney for the defendant agreed that a sum of \$125.00 would be made as a down payment and the remainder be paid in equal monthly installments of \$25.00. Should the \$25.00 be paid monthly it will take approximately fourteen (14) months to pay same. Further, no order was made in the criminal minute docket by the Judge allowing such arrangements.

"1. Can the Sheriff make arrangements without an order from the Court? If he can, what length of time may be allowed for payments?

"2. What length of time may the Magistrate allow for payment of cost and judgment?

"My purpose in requesting this opinion is: that often in this county time has been extended by the Sheriff's Department and after a period of several years they state the party cannot be located

and prorate the amount collected between each officer having fees. The remaining is left uncollected.

"1. Who is liable for such remaining cost, where negligence is occurring?

"2. Can the bond of the Sheriff be called upon for negligence of office in these matters?"

We know of no authority vested in a sheriff to alter the terms of a final judgment of conviction in a misdemeanor case. Relevant statutory provisions are as follows:

Art. 785, V. A. C. C. P.:

"When the judgment against a defendant is for a fine and costs he shall be discharged from the same:

"1. When the amount thereof has been fully paid.

"2. When remitted by the proper authority.

"3. When he has remained in custody for the time required by law to satisfy the amount thereof."

Art. 787:

"When a judgment has been rendered against a defendant for a pecuniary fine, if he is present, he shall be imprisoned in jail until discharged as provided by law. A certified copy of such judgment shall be sufficient to authorize such imprisonment."

Art. 788:

"When a pecuniary fine has been adjudged against a defendant not present, a capias shall forthwith be issued for his arrest. The sheriff shall execute the same by placing the defendant in jail."

Thus it is seen that upon the rendition of judgment it becomes the duty of the peace officer to see to it that the judgment of the court is satisfied according to law.

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It has been said that, "The imprisonment authorized by the statute is designed to enforce punishment where it is imposed by a fine and it can make no difference as respects the mode of enforcing the punishment whether the offense is punishable by a fine and imprisonment or by fine only. The law gives the same means of enforcing the pecuniary penalty in either case. The imprisonment authorized by the statute is an actual imprisonment within the four walls of the jail; and where the sheriff permits the convict committed to his custody to go at large, he is liable for an escape." *Hiram Luckey v. The State*, 14 Tex. 400. In the case of *Ex parte Wyatt*, 16 S. W. 301, the court had before it a situation where the sheriff had assumed to defer a jail sentence until the rheumatism of the defendant was better. The court after reviewing the applicable statutes said:

"It is manifest from these provisions of our law that, whenever a party is committed to jail by order of the court, it means imprisonment in the jail; and no other kind of custody, whether agreed to by the sheriff or not, will answer or discharge such punishment. The sheriff has no right, no matter what his motives, whether of humanity or not, to commute or alter this punishment, and any act of his doing so is a violation of his duty, and absolutely void."

We conclude that a sheriff is without authority to defer a judgment or arrange for installment payment for a misdemeanor fine in the absence of an order of the court in accordance with the statute hereafter cited in connection with your second question.

In answer to your second question, you are advised that under the terms of Art. 688, V. A. C. C. P., the judge in a misdemeanor case is authorized to defer judgment for a period not to exceed six months.

We think your remaining questions may best be answered by a quotation from the case of *Spredley et al. v. State*, (Civ. App., error refused) 56 S. W. 114. In that case the court permitted recovery from a former sheriff and his bondsmen for fines and costs which it was alleged that he had "wilfully neglected and refused to collect." Writing on this situation the court had this to say:

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* * * The evidence shows that the persons against whom the fines and costs were adjudged for which the state recovered, as well as those named in the cross assignments of error made in behalf of the state, were all remanded by final judgment of the court to the custody of the sheriff until the fine and costs should be paid; and it further shows that they were permitted to go at large by the said Spradley without being discharged of the same, and that the fines and costs in these cases have never been paid. A defendant convicted of a misdemeanor can only be discharged of the fine and costs: (1) When the amount of such fine and costs has been fully paid; (2) when the same have been remitted by the proper authority; (3) when the defendant has remained in custody the length of time required by law to satisfy the amount of such judgment as provided by statute. Code Cr. Proc. arts. 847, 856. There is no contention that the fine and costs were discharged in either of these ways prescribed by law. As to three of the persons, Spradley testified that they lay in jail a sufficient length of time to discharge the fine and costs, but there is no evidence that article 856 of the Code of Criminal Procedure was complied with, so as to entitle the parties to so discharge them. The county judge had no authority to direct the release of the parties without a discharge of the judgments against them in one of the modes provided by law. The power to remit fines is given by law to the governor alone. Article 838 of the Revised Statutes requires an account to be kept by the clerk with the sheriff, in which the latter shall be charged with all judgments, fines, forfeitures, and penalties payable to the county in the courts of his county, and with the collection of which he is by law made chargeable; and article 839 provides that the sheriff may free himself from liability by producing the receipt of the county treasurer showing the payment of such judgment, fine, forfeiture, or penalty, or by showing to the satisfaction of the commissioners' court that the same cannot be collected, or that the same has been discharged by imprisonment or labor, or by escape, without fault or neglect; and that none of the credits so allowed, except those on receipts of the treasurer, shall be entered without an order of the commissioners' court allowing the same. These provisions of the Revised Statutes as well as of the Code of Criminal Procedure were enacted for the purpose of compelling the sheriff to do his duty in collection of fines, and were made plain to meet just such cases as the present.* * *

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Present code citations corresponding to the old articles cited in the above quoted opinion are Arts. 785 and 793, V. A. C. C. P., and Art. 1616, V. A. C. S. See also 38 Tex. Jur. 507 and Wynne et al, vs. State, (Civ. App.) 158 S. W. 785.

We hope our views on these questions will be of assistance to your office.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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EA:24

APPROVED JUL 23 1946
Carl F. Smith
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